

# United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Matthew F. Kennelly	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	99 C 6679	DATE	11/29/2004
CASE TITLE	BCBS vs. American Express Company		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

## MOTION:

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## DOCKET ENTRY:

(1)	<input type="checkbox"/>	Filed motion of [ use listing in "Motion" box above.]
(2)	<input type="checkbox"/>	Brief in support of motion due _____.
(3)	<input type="checkbox"/>	Answer brief to motion due _____. Reply to answer brief due _____.
(4)	<input type="checkbox"/>	Ruling/Hearing on _____ set for _____ at _____.
(5)	<input type="checkbox"/>	Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(6)	<input type="checkbox"/>	Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(7)	<input type="checkbox"/>	Trial[set for/re-set for] on _____ at _____.
(8)	<input type="checkbox"/>	[Bench/Jury trial] [Hearing] held/continued to _____ at _____.
(9)	<input type="checkbox"/>	This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to] <input type="checkbox"/> FRCP4(m) <input type="checkbox"/> Local Rule 41.1 <input type="checkbox"/> FRCP41(a)(1) <input type="checkbox"/> FRCP41(a)(2).
(10)	<input checked="" type="checkbox"/>	[Other docket entry] For the reasons set forth on the attached Memorandum Opinion and Order, the Court grants plaintiff's motion to amend the judgment (57-2). The Clerk is directed to amend an amended judgment stating as follows: Nunc pro tunc 5/23/2000, the stipulated motion for dismissal with prejudice, pursuant to FRCP 41(a)(1), and with each party bearing its own costs and attorney's fees is granted. The parties are directed to comply with terms of the settlement agreement, which is hereby incorporated into the judgment. The Court shall retain jurisdiction for the purpose of enforcing the terms of the settlement.
(11)	<input checked="" type="checkbox"/>	[For further detail see order attached to the original minute order.]

<input checked="" type="checkbox"/> No notices required, advised in open court. <input type="checkbox"/> No notices required. <input type="checkbox"/> Notices mailed by judge's staff. <input type="checkbox"/> Notified counsel by telephone. <input type="checkbox"/> Docketing to mail notices. <input type="checkbox"/> Mail AO 450 form. <input type="checkbox"/> Copy to judge/magistrate judge.	OR courtroom deputy's initials	NOV 30 2004 date docketed <i>AIR</i> docketing deputy initials date mailed notice mailing deputy initials	Document Number
			60

NOV 30 2004  
 Date/time received in  
 central Clerk's Office

**BLUE CROSS AND BLUE SHIELD  
ASSOCIATION,**

**vs.**

**Defendant.**

**Case No. 99 C 6679**

**DOCKETED**  
**NOV 30 2004**

**[w]ithin five days after the Effective Date [of the agreement], the Association will file a dismissal, with prejudice, of the Litigation and will dismiss the appeal**

pending in the Litigation. *The parties agree that the District Court will retain jurisdiction to enforce this Agreement in the event of an allegation of its breach.*

...

Motion for Reconsideration (etc.), Ex. A ¶ 1 (emphasis added). The Court was advised of this term of the agreement and entered an order which stated as follows:

Stipulated motion for dismissal with prejudice, pursuant to Federal Rule of Civil Procedure 41(a)(1), and with each party bearing its own costs and attorney's fees is granted. *This Court shall retain jurisdiction over this matter for purposes of enforcing the terms of the settlement agreement.*

*Id.*, Ex. B (Order of May 23, 2000) (emphasis added).

In September 2004, Blue Cross filed a motion seeking to enforce the settlement agreement, alleging that American Express was violating the agreement by marketing a new credit card bearing the word "Blue" on its face. American Express objected, arguing that the Court lacked jurisdiction to enforce the settlement agreement as part of this case and that if it wished to enforce the agreement, Blue Cross had to file a separate lawsuit. The Court agreed in an oral ruling made on November 3, 2004. The Court acknowledged that the Supreme Court, in *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375 (1994), appeared to hold that language of the type included in the dismissal order in this case was sufficient to permit a district court to retain jurisdiction following a dismissal to enforce a settlement agreement. But the Court, relying on several recent decisions by the Seventh Circuit, including *Jessup v. Luther*, 277 F.3d 926 (7th Cir. 2002), concluded that the Seventh Circuit requires more than "retaining jurisdiction" language in order to permit continuing jurisdiction after dismissal to enforce a settlement. The Court therefore denied Blue Cross' motion to enforce the settlement agreement, leaving it to Blue Cross to file a separate lawsuit.

Blue Cross then moved to reconsider, arguing that this Court was required to follow *Kokkonen*. The Court orally denied this motion on the day it was presented. But Blue Cross' motion included an alternative request, made under Federal Rule of Civil Procedure 60(a) – that the Court amend the May 2000 dismissal order to conform to the parties' intention, including whatever language was necessary to allow the Court properly to retain jurisdiction to enforce the settlement agreement. For the reasons stated below, the Court grants Blue Cross' Rule 60(a) motion.

### Discussion

Rule 60(a) provides that “[c]lerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party.” Fed. R. Civ. P. 60(a). Not all errors in judgments can be corrected under Rule 60(a). “If the flaw lies in the translation of the original meaning of the judgment, then Rule 60(a) allows a correction; if the judgment captures the original meaning but is infected by error, then the parties must seek another source of authority to correct the mistake.” *United States v. Griffin*, 782 F.2d 1393, 1396-97 (7th Cir. 1986).

It is beyond question that a court may retain jurisdiction to enforce a settlement following dismissal, so long as the dismissal includes the proper language. *Kokkonen* makes this clear:

If the parties *wish* to provide for the court's enforcement of a dismissal-producing settlement agreement, they can seek to do so. When the dismissal is pursuant to Federal Rule of Civil Procedure 41(a)(2), which specifies that the action “shall not be dismissed at the plaintiff's insistence save upon order of the court and upon such terms and conditions as the court deems proper,” the parties' compliance with the terms of the settlement contract (or the court's “retention of jurisdiction” over the settlement contract) may, in the court's discretion, be one of the terms set forth in the order. Even when, as occurred here, the dismissal is pursuant to Rule 41(a)(1)(ii) (which does not by its terms empower a district court to attach

conditions to the parties' stipulation of dismissal) we think the court is authorized to embody the settlement contract in its dismissal order (or, what has the same effect, retain jurisdiction over the settlement contract) if the parties agree.

*Kokkonen*, 511 U.S. at 381-82. The Seventh Circuit likewise has stated that by incorporating a settlement agreement into a dismissal order, the district court may properly retain jurisdiction to enforce the agreement's terms. *See Abbott Laboratories v. CVS Pharmacy, Inc.*, 290 F.3d 854, 857 (7th Cir. 2002).

In this case, it is undisputed that both Blue Cross and American Express intended for this Court to retain jurisdiction to enforce their settlement agreement. Their agreement in this regard was clear and unambiguous: "[t]he parties agree that the District Court will retain jurisdiction to enforce this Agreement in the event of an allegation of its breach." Motion for Reconsideration (etc.), Ex. A ¶ 1.

The Court, however, did not properly translate the parties' intention when it entered the dismissal order. As the Court noted in its oral ruling denying the motion to enforce the settlement, we relied on *Kokkonen*, believing that it was sufficient simply to include language retaining jurisdiction. But as the Court later ruled, subsequent developments have revealed that our belief was incorrect.

The Court finds that this is an error that may be corrected under Rule 60(a). That Rule does not permit "changes that alter the original meaning to correct a legal or factual error," but it authorizes "changes that implement the result intended by the court at the time the order was entered." *Kokomo Tube Co. v. Dayton Equipment Servs. Co.*, 123 F.3d 616, 623 (7th Cir. 1997) (quoting *Wesco Prods. Co. v. Alloy Automotive Co.*, 880 F.2d 981, 984 (7th Cir. 1989)). The amendment of the May 2000 dismissal order requested by Blue Cross falls into the latter

category. Blue Cross simply wants to fix the dismissal order so that it provides what both parties and the Court intended at the time: retention by this Court of jurisdiction to enforce the settlement agreement.

There is, as the Court has pointed out to Blue Cross, some risk that the Seventh Circuit will not see it the same way as this Court does if there is ultimately an appeal. If so, all of Blue Cross' efforts will be for naught, as jurisdiction will be found lacking, and Blue Cross will be forced to go back to square one. But Blue Cross is entitled to bear that risk if it so chooses. The relief it seeks is appropriate under Rule 60(a), and accordingly, the Court grants the motion to amend the judgment.

### **Conclusion**

For the reasons stated above, the Court grants plaintiff's motion to amend the judgment [docket # 57-2]. The Clerk is directed to enter an amended judgment stating as follows:

*Nunc pro tunc* May 23, 2000, the stipulated motion for dismissal with prejudice, pursuant to Federal Rule of Civil Procedure 41(a)(1), and with each party bearing its own costs and attorney's fees is granted. The parties are directed to comply with the terms of the settlement agreement, which is hereby incorporated into the judgment. The Court shall retain jurisdiction over this matter for purposes of enforcing the terms of the settlement agreement.

  
MATTHEW F. KENNELLY  
United States District Judge

Date: November 25, 2004